

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES

In the Matter of the Complaint Against)	SUMMARY OF FACTS
People for Responsible Government and the)	AND
Gallatin Valley Licensed Beverage Association)	STATEMENT OF FINDINGS

Brian Close filed two complaints with the Commissioner of Political Practices (hereafter “Commissioner”) alleging that People for Responsible Government (hereafter “PRG”), a political committee, and the Gallatin Valley Licensed Beverage Association (hereafter GVTA),¹ violated certain Montana campaign finance and practices laws. The complaints set forth four separate claims.

Claim 1

The complaint alleges PRG violated Montana Code Annotated § 13-37-210, Montana’s naming and labeling statute for political committees.

Claim 2

The complaint alleges PRG violated Montana Code Annotated § 13-37-216(1)(a)(iii) by contributing more than \$100 to the campaign of candidate Andrew Cetraro.

Claim 3

The complaint alleges the GVTA violated Montana Code Annotated § 13-37-217, which prohibits contributions in the name of an undisclosed principal.

Claim 4

The complaint alleges PRG, a for-profit corporation, violated Montana Code Annotated § 13-35-227, which prohibits direct corporate contributions and expenditures in connection with a candidate.

¹ The Gallatin Valley Licensed Beverage Association has also referred to itself as the “Gallatin County Tavern Association,” the “Gallatin Tavern Association,” and the “Gallatin Valley Tavern Association.”

SUMMARY OF FACTS

1. "People for Responsible Government, Inc." (PRG), a political committee, filed a C-2 Statement of Organization form with the Commissioner's office on September 17, 2001. The C-2 listed the following officers: Cathi Simonson, treasurer; Scott LaProwse, president; Mike Hope, vice president; and Kurtis M. Shull, secretary. No deputy treasurer was designated. PRG's address was listed on the C-2: "503 West Mendenhall, Suite 4, Bozeman, Montana 59715." The address was subsequently changed to: "300 Wilson Avenue, Suite 3005, Bozeman, Montana 59715." On the C-2, the purpose of PRG was identified as follows: "To support or oppose candidates for elective office, ballot issues and political action as determined appropriate by the Directors of the Corporation."

2. On September 10, 2001, PRG filed Articles of Incorporation with the Office of the Secretary of State. According to Article Two, the period of duration of PRG is "perpetual." Article Three lists purposes of the corporation, including:

To support or oppose candidates for elective office, ballot issues and political issues as determined appropriate by the Directors of the Corporation.

To engage in the ownership, leasing and renting of real and personal property for commercial purposes, . . .

To own, receive, purchase, invest in, mortgage, pledge, transfer, and in any way and all other ways, own and dispose of properties of any kind or nature, whether real or personal.

To carry on any business whatsoever that this corporation may deem proper or convenient in connection with any of the foregoing purposes or otherwise, or that it may deem calculated, directly, or indirectly, to improve the interest of this corporation, . . .

Article Four authorizes the corporation to issue 50,000 shares of capital stock with no par value.

3. No articles of dissolution of the corporation have been filed, and the corporation remains in good standing under the laws of the State of Montana.

4. PRG became involved in the Bozeman city elections in 2001. PRG's Campaign Finance Report for the period September 14 through October 20, 2001 lists a \$500 contribution on September 19, 2001, to the campaign of Andrew Cetraro, a candidate for the Bozeman City Commission.

5. On October 31, 2001, the campaign of Andrew Cetraro returned to PRG \$400 of the \$500 contribution that PRG had made to Cetraro and, on November 1, 2001, returned to PRG the remaining \$100. Cetraro stated he initially returned the \$400 to PRG because he believed PRG was subject to the \$100 limitation for contributions from political committees to candidates. He then decided to return the remaining \$100 "just so there wouldn't be any trouble."

6. PRG's Campaign Finance Report for the period October 21 through November 30, 2001, lists a \$500 refund from Andrew Cetraro described as: "erroneous contribution repaid."

7. PRG's Campaign Finance Report for the period September 14 through October 20, 2001, shows the GVTA contributed to PRG a combined total of \$12,000 in four separate contributions during the reporting period. The Report lists nine individuals who contributed a combined total of \$3,000 during the period. In addition, one unidentified person contributed \$10.² Three of the identified individual contributors listed different occupations with the same employer: "D & R Vending." D & R Vending, Inc. is a Bozeman corporation that is engaged in the business of distributing coffee and tea products and providing and servicing equipment for establishments that provide or sell coffee and tea products. Three individual contributors listed occupations in three

² Montana law does not require disclosure of the identification of persons who contribute less than \$35 to candidates or political committees. See Montana Code Annotated § 13-37-229.

different bar and/or restaurant businesses; and the other three individual contributors listed occupations of “airline pilot,” “insurance,” and “retail.”

8. PRG’s Campaign Finance Report for the period October 21 through November 30, 2001, reveals that the GVTA contributed to PRG a combined total of \$5,500 in two separate contributions; and eighteen individuals contributed a combined total of \$2,630. Five of the eighteen individual contributors listed occupations for employers connected with bar and/or restaurant businesses.³ The remaining individual contributors listed various and, for the most part, unrelated occupations, including artist, construction worker, realtor, county commissioner, and plumber.

9. PRG’s Campaign Finance Report for the period December 1 through December 31, 2001, lists a single contribution from an individual in the amount of \$200.

10. As noted in Facts 7 and 8, between September 14 and November 30, 2001, the GVTA contributed a total of \$17,500 to PRG. On November 5, 2001, based on a review of PRG’s initial Campaign Finance Report, the Commissioner sent a letter to the GVTA advising that, under state campaign finance laws, the GVTA had become an incidental political committee with associated reporting responsibilities. The Commissioner’s letter directed the GVTA to complete and file a C-2 Statement of Organization. On November 14, 2001, GVTA, through its attorney, sent a letter to the Commissioner’s office. The GVTA sent another letter to the Commissioner’s office on November 28, 2001. Neither letter directly addressed the Commissioner’s position that the GVTA had become an incidental political committee nor did the GVTA file the requested Statement of Organization. On November 30, 2001, the Commissioner’s office sent a “second notice” to GVTA consisting of another copy of its November 5, 2001 letter. On December 7, 2001, the GVTA, through its attorney, sent a letter to the

³ Although contributor Debra Shull listed her occupation as a self-employed interior designer, a check of records on file in the Secretary of State’s Office revealed she is also listed as President and a director of The Bay, Inc., a Bozeman area bar and restaurant; therefore, her name has been included as one of the five individual contributors associated with the bar and/or restaurant business.

Commissioner's office referring the Commissioner to GVTA's previous letters. The GVTA has not filed a Statement of Organization or any reports of contributions with the Commissioner's office.

11. PRG's Campaign Finance Report for the period September 14 through October 20, 2001, lists a \$1,000 contribution from "Kim Ingus, Office Manager, Cat's Paw." Kim Innes (not Ingus) has been the bookkeeper at the Cat's Paw and the Molly Brown, two Bozeman area bars, since 1994. Ms. Innes denies that she made *any* contribution to PRG. A bank deposit slip with a hand-written date of October 19, 2001, records a \$1,000 deposit to the account of PRG with the notation "Ingus" hand-written on the deposit slip. Despite the October 19 date, the back of the deposit slip shows that the \$1,000 was actually deposited in PRG's account on October 31, 2001. The \$1,000 check that accompanied the deposit slip was drawn on the account of Tom Hougen and Allison Hougen and is signed by Allison Hougen. The check is made payable to "People for Responsible Government" and is dated October 30, 2001. The back of the check shows that it was deposited on October 31, 2001, the same date as the \$1,000 deposit referenced above.

12. According to records on file in the Office of the Secretary of State, Thomas Hougen is listed as the President and a director of the Cat's Paw, and Allison Hougen is listed as the Secretary and a director of the Cat's Paw. None of the Campaign Finance Reports filed by PRG lists a \$1,000 contribution, or a contribution in any amount, from Allison or Thomas Hougen.

13. The Montana Tavern Association (hereafter "MTA") holds a convention each year. Community tavern associations (such as the GVTA) bid for the convention. In 2000, Livingston submitted a bid for and was awarded the annual MTA convention; however, before the convention was held, the Livingston facility that was to be the location for the convention went out of business. A decision subsequently was made to hold the 2000 convention in nearby Bozeman.

14. In 2001, Bozeman submitted a bid for and was awarded the MTA convention. Thus, the MTA convention was held two years in a row in Bozeman.

15. The MTA convention includes various banquets, golf tournaments, brunches, etc. Local businesses pay to sponsor holes on the golf course during the golf tournaments. People from throughout the state attend the annual conventions, and the money that is raised is divided between the MTA and the local sponsoring association. The GVTA received money raised from the MTA conventions held in Bozeman in 2000 and 2001.

16. The GVTA also holds an annual dinner to raise funds for the local association. In addition, local businesses pay annual membership dues to the GVTA.

17. A review of the bank records of the GVTA reveals no evidence that any funds that were paid to the GVTA were earmarked for subsequent contributions to PRG.

18. Joe Frost and Marcia Youngman were candidates for the Bozeman City Commission in the 2001 election. During their campaigns, Frost was an incumbent city commissioner, and Youngman was serving as the mayor of Bozeman. Frost was defeated in the election, while Youngman was elected to the City Commission.

19. Bozeman has a city manager/city commission form of government. There are five elected commissioners, each elected to four-year, staggered terms of office. Elections are held every two years. Steve Kirchoff was an incumbent Bozeman city commissioner during the 2001 Bozeman city election, having been elected in 1999. Pursuant to state law (Montana Code Annotated § 7-3-4319), when the sitting mayor's term expires, the holdover city commissioner who received the most votes in the previous election becomes the mayor during the last two years of his or her term. Based on that provision in state law, Kirchoff, who had received the most votes in the previous election, became the mayor when the term of the sitting mayor, Marcia Youngman, expired. Kirchoff was not a candidate for election to any office in 2001.

20. For its efforts to influence the Bozeman elections, PRG retained Impact Advertising as its advertising agency. According to Roy Lee, the owner of the agency, Impact Advertising's task was to put together a political ad campaign, which included creating copy layout, handling placement of newspaper ads, and preparation of scripts for radio ads. Impact Advertising prepared four scripts for radio ads to be run on various radio stations in the Bozeman area. Impact Advertising also prepared all newspaper ads. Kurt Shull, Secretary of PRG, approved all newspaper and radio ads.

Newspaper Advertisements

21. Twenty-five political newspaper ads (including some duplicate ads) were placed by PRG between August 31 and November 4, 2001; and all were placed in the Bozeman Daily Chronicle (hereafter "the Chronicle").

22. On August 31 and September 2, 2001, the following ad (hereafter "Letting Others Make Decisions 1" ad) was placed by PRG in the Chronicle:

Are You Letting Other People Make Your Decisions?

- √ Fact: Approximately 35,000 people live in Bozeman
- √ Fact: Approximately 16,000 are registered to vote
- √ Fact: Approximately 4,000 voted in the last local election

How much more business can we afford to lose?
Where are the jobs going?
Where is our tax base going?
Where are Zoot Enterprises and Right Now Technologies?

Not in the city limits!

Get out and vote on November 6th!

The ad did not include the name and address of the person or entity paying for the ad.

23. On September 16 and 19, 2001, the following ad (hereafter “Abraham Lincoln quote 1” ad) was placed by PRG in the Chronicle:

*“No man is good enough to govern
another man without that other’s consent.”*
--- Abraham Lincoln
Exercise Your Rights
Get Out and Vote November 6th
Paid for by The People for Responsible Government, Kathy Hayden,
Treasurer, P.O. Box 1408, Bozeman, MT 59771-1408

24. On September 23 and 26, 2001, the following ad (hereafter “Abraham Lincoln quote 2” ad) was placed by PRG in the Chronicle:

*“When a man assumes a public trust, he
should consider himself as public property.”*
--- Abraham Lincoln
Exercise Your Rights
Get Out and Vote November 6th
Paid for by The People for Responsible Government, Kathy Hayden,
Treasurer, P.O. Box 1408, Bozeman, MT 59771-1408

25. On September 30; October 3, 7, 14, 17, and 28; and November 2, 2001, the following ad (hereafter “Kirchoff quote” ad) was placed by PRG in the Chronicle:

“I don’t believe in the free enterprise system.”
--- Steve Kirchoff
City Council
Future Mayor
Exercise Your Rights
Get Out and Vote November 6th
Paid for by The People for Responsible Government, Kathy
Hayden, Treasurer, P.O. Box 1408, Bozeman, MT 59771-1408

Several of the Kirchoff quote ads referred to Kirchoff as “Bozeman City Commissioner” rather than “City Council.” Several of the ads included the following notation following the “paid for by PRG” attribution: “Supported by the Gallatin Tavern Association and Others.”

26. On October 17 and 21, 2001, the following ad (hereafter “People for Responsible Government” ad) was placed by PRG in the Chronicle:

People for
Responsible Government

This is what we stand for

We want to see elected officials on the city commission who are able to set aside their personal agendas to do what is right, and best for the community of Bozeman.

We want to see our elected officials balance business and economic needs with the quality of life that we all enjoy in the city of Bozeman and surrounding areas.

We want to encourage people of Bozeman to get out and vote!

We want to spark people’s interest and encourage involvement in city and county government.

We want to inform people how local governments can impact their lives in both positive and negative ways.

We want to expose irresponsible comments and actions made by our elected officials, and hold them accountable.

We do believe in the free enterprise system!

People for Responsible Government
Is supported by the Gallatin Valley
Tavern Association and others
Cathi Hazen Treasurer

27. On October 21, 2001, the following ad (hereafter “Marcia Youngman 1” ad) was placed by PRG in the Chronicle:

“Who is the *REAL* Marcia Youngman?”

- *Marcia claims* that she has helped make Bozeman a business-friendly city . . .
- *Marcia says* that she has worked for affordable housing . . .
- *Marcia promises* to put taxpayers [sic]

- *As Mayor*, Marcia has presided over the most anti-business City Commission in our history, as businesses have been chased from town (Zoot, Osco), others have been extorted (Wal-Mart), and who knows how many others have decided to look elsewhere?
- *Marcia’s approach* to affordable housing has been to create additional costs and burdens for new housing, effectively raising the price of new homes in Bozeman.
- *Since Marcia has been Mayor*, the Bozeman city budget has increased from \$30,000,000 to \$40,000,000, a one-third increase in two-years [sic] with only 3,000 new residents.

As voters, we need to make sure our leaders represent our best interest - Vote Smart on November 6th.

Paid for The People for Responsible Government, Kathy Hayden,
Treasurer, P.O. Box 1408, Bozeman, MT 59771-1408

28. On October 28, 2001, the following ad (hereafter “Marcia Youngman 2” ad) was placed by PRG in the Chronicle:

Who is the *REAL* Marcia Youngman?

- Marcia Youngman says she advocates smart growth, but Bozeman is unfairly characterized as being unfriendly to developers, and that “We’re having to overcome a huge perceptual factor [sic].”
- She says she doesn’t think that there is any lesson to be learned from Zoot Enterprises choosing to build outside city limits, and “I don’t know how we could have handled it any better than we did.”

Doesn’t learning from our past successes
and failures lead to smart growth?

Make sure your candidates represent your
best interests, vote smart on November 6th.

Paid for by The People for Responsible Government
Kathy Hayden, Treasurer
P.O. Box 1408, Bozeman, MT 59771-1408

29. On November 2, 2001, the following ad (hereafter “Marcia Youngman 3” ad) was placed by PRG in the Chronicle:

“Who is the *REAL* Marcia Youngman?”

- Marcia *claims* that she has helped make Bozeman a business friendly city.
- As Mayor, Marcia presided over the most anti-business City Commission in our history. Businesses have been chased from town, (Zoot, Osco), others have been extorted (Wal-Mart), and who knows how many others have decided to look elsewhere?

As voters, we need to make sure our
leaders represent our best interests

Vote Smart on November 6th.

Paid for by The People for Responsible Government
Kathy Hayden, Treasurer
P.O. Box 1408, Bozeman, MT 59771-1408

30. On November 3, 2001, the following ad (hereafter “Marcia Youngman 4” ad) was placed by PRG in the Chronicle:

"Who is the *REAL* Marcia Youngman?"

- Marcia Youngman says she advocates smart growth, but Bozeman is unfairly characterized as being unfriendly to developers, and that “We’re having to overcome a huge perceptual factor [sic].”
- She says she doesn’t think that there is any lesson to be learned from Zoot Enterprises choosing to build outside city limits, and “I don’t know how we could have handled it any better than we did.”
- Doesn’t learning from our past successes and failures lead to smart growth?

Make sure your candidates represent your best interests.

Vote Smart on November 6th.

Paid for by The People for Responsible Government
Kathy Hayden, Treasurer
P.O. Box 1408, Bozeman, MT 59771-1408

31. On October 21 and November 2, 2001 (with minor text changes), the following ad (hereafter “Joe Frost” ad) was placed by PRG in the Chronicle):

“Who is the *REAL* Joe Frost?”

- *Joe claims* to be a friend of the Business Community
- *Commissioner Frost* wants to create more attractive neighborhoods that make more efficient land use in our city.
- *Joe Campaigned*, in 1997 on the premise that he wanted to save the taxpayer’s money
- *However*, he has been a part of the most anti-business city commission in our history. Businesses have been chased from town (Zoot, Osco), others have been extorted (Wal-Mart), and who knows how many others have decided to look elsewhere?
- Do Arcadia Gardens, Stadium Apartments and Bridger Town Square reflect that desire?
- *Why then*, did the city budget increase from \$31,010,000 in 1997 to \$40,224,000 in 2002 while the city population only increased by 3,000 people?

As voters, we need to make sure our leaders represent our best interests. Vote Smart on November 6th.

Paid for by The People for Responsible Government, Kathy Hayden, Treasurer
P.O. Box 1408, Bozeman, MT 59771-1408

32. On October 28, 2001, the following ad (hereafter “Phrases Politicians Use” ad) was placed by PRG in the Chronicle:

THE PHRASES POLITICIANS USE TO HIDE FROM THEIR OWN WORDS . . .

- “It was taken out of context”
- “That’s not what I said”
- “I was misquoted”

But you can’t hide a voting record. Make sure you agree with your candidates.

Vote Smart on November 6th

Paid for by The People for Responsible Government
Kathy Hayden, Treasurer
P.O. Box 1408, Bozeman, MT 59771-1408

33. On November 4, 2001, the following ad (hereafter “Can’t Complain” ad) was placed by PRG in the Chronicle

You can’t complain if you don’t vote!
Make your voice heard . . .
Vote Smart on November 6th
Paid for by
The People for Responsible Government
Kathy Hayden, Treasurer
P.O. Box 1408, Bozeman, MT 59771-1408
Supported by The Gallatin Tavern Association and Others.

34. On November 4, 2001, an ad (hereafter “VOTE” ad) was placed by PRG in the Chronicle. The ad repeated the word “vote” 70 times with the date “November 6th” inserted in the middle of the ad. At the bottom of the ad was the following attribution:

Paid for by
The People for Responsible Government,
Kathy Hayden, Treasurer,
P.O. Box 1408, Bozeman, MT 59771-1408
Supported by The Gallatin Tavern Association and Others.

35. On November 4, 2001, the following ad (hereafter “Letting Others Make Decisions 2” ad) was placed by PRG in the Chronicle:

Are You Letting Other People Make Your Decisions?

Fact: Approximately 35,000 people live in Bozeman
Fact: Approximately 16,000 are registered to vote
Fact: Approximately 4,000 voted in the last local election

Make sure your voice is heard
Vote Smart on November 6th

Paid for by The People for Responsible Government,
Kathy Hayden, Treasurer, P.O. Box 1408, Bozeman, MT 59771-1408

Supported by the Gallatin Tavern Association and Others

36. On October 14, 2001, the GVTA placed an ad in the Chronicle titled: "The Free Enterprise System at Work . . ." (hereafter "Free Enterprise System" ad). The ad stated the GVTA had compiled a list of Bozeman area bars and restaurants to determine each establishment's smoking policy. Each business was identified in the ad and placed in a category that reflected its smoking policy: totally non-smoking, non-smoking sections, non-smoking dining rooms, and smoking permitted. The ad stated:

Of the 126 establishments identified which serve a variety of food, from full meals to hot dogs, burgers, chili, etc., 88 are totally non-smoking, and an additional 5 have separate non-smoking dining rooms (93 total = 74%). There are 28 more food-serving establishments who permit smoking; 7 of these have non-smoking sections. Also, there are 5 bar/casinos which serve no food (33 total – 26%)

The ad concluded with the following statements and attribution:

These businesses chose their own smoking policies!

You also have the right to choose – VOTE ON NOVEMBER 6th

Paid for by Gallatin County Tavern Association,
P.O. Box 3618, Bozeman, MT 59772

The ad, which cost \$1,466.00, was included in the October, 2001 Chronicle billing statement that was sent to PRG, and PRG paid for the ad.

37. PRG paid the following amounts for the newspaper ads that it placed in the Chronicle, as described above⁴:

Billing Period 9/1/01 – 9/30/01

DATE	DESCRIPTION OF AD	COST OF AD
8/31/01	Letting Others Make Decisions 1	\$275.25
9/2/01	Letting Others Make Decisions 1	\$142.29
9/16/01	Abraham Lincoln quote 1	\$260.55
9/19/01	Abraham Lincoln quote 1	\$126.15
9/23/01	Abraham Lincoln quote 2	\$260.55
9/26/01	Abraham Lincoln quote 2	\$126.15
9/30/01	Kirchoff quote	\$250.55

Billing Period 10/1/01 – 10/31/01

DATE	DESCRIPTION OF AD	COST OF AD
10/3/01	Kirchoff quote	\$126.15
10/7/01	Kirchoff quote	\$460.00
10/14/01	Free Enterprise System	\$1,466.00
10/14/01	Kirchoff quote	\$460.00
10/17/01	Kirchoff quote	\$223.10
10/17/01	People for Responsible Government	\$357.00
10/21/01	People for Responsible Government	\$465.21
10/21/01	Marcia Youngman 1	\$465.21
10/21/01	Joe Frost	\$465.21
10/28/01	Marcia Youngman 2	\$465.21
10/28/01	Phrases Politicians Use	\$465.21
10/28/01	Kirchoff quote	\$465.21

Billing Period 11/2/01 – 11/4/01

DATE	DESCRIPTION OF AD	COST OF AD
11/2/01	Marcia Youngman 3	\$447.06
11/2/01	Joe Frost	\$447.06
11/2/01	Kirchoff quote	\$223.53
11/3/01	Marcia Youngman 4	No Charge, due to Paper's error
11/4/01	Can't Complain	\$465.21
11/4/01	VOTE	\$465.21
11/4/01	Letting Others Make Decisions 2	\$465.21

⁴ Some bills were paid by PRG directly, while others were paid by Impact Advertising, which then sought reimbursement from PRG.

Radio Advertisements

38. Impact Advertising prepared four radio ads for PRG as part of its creation of a political ad campaign.

39. The first ad, identified by Impact Advertising as “No Humor 1,” had the following script:

Studies show that adding humor makes advertising more effective, but there’s no humor in the fact that during the last local election, only one-quarter of Bozeman’s registered voters visited the polls. As our city grows, it is more important than ever to have city government that can understand and deal with the complex issues that face Bozeman. Make sure you know who is making decisions on your behalf and how they vote. Log onto www.Bozeman.net for the meeting minutes of the Bozeman City Commission. Be informed and vote smart on November 6th. (People for Responsible Government, Kathy Hayden, Treasurer)

40. The second ad, identified by Impact Advertising as “No Humor 2,” had the following script:

Studies show that adding humor makes advertising more effective, but there’s no humor in the fact that business growth in Bozeman has suffered as of late. Businesses have chosen to build outside the city limits, big box stores have struggled for expansion approval, and one city commissioner states that they don’t believe in the free enterprise system, while another admits “we’re just not used to dealing with big box stores and these issues.” It’s time for leadership that believes in free enterprise and smart growth. Make sure your voice is being heard, vote for your future on November 6th. (People for Responsible Government, Kathy Hayden, Treasurer).

41. The third ad, identified by Impact Advertising as “Marcia Youngman,” had the following script:

Who is the real Marcia Youngman? Marcia claims that she has helped make Bozeman business friendly, but Marcia has presided over the most anti-business city commission in our history. Businesses have been chased from town, others have been extorted, and others have just decided to look

elsewhere. Marcia says she's worked for affordable housing, yet she has advocated additional costs for new housing, effectively raising the cost of new homes. It's time to decide if the real Marcia Youngman represents your best interests. Vote smart on November 6th. Paid for by People for Responsible Government, Kathy Hayden, Treasurer.

42. The fourth ad, identified by Impact Advertising as "Joe Frost," had the following script:

Who is the real Joe Frost? Joe claims that he's pro-business, but in fact, Joe has been part of one of the most anti-business city commissions in history. Several businesses have chosen to move outside city limits and some have chosen not to build at all. Joe campaigned on the premise of saving taxpayers money, but says citizens must vote to increase their taxes in order to pay for something as simple as additional street maintenance. It's time to decide if the real Joe Frost represents your best interests. Vote smart on November 6th. Paid for by People for Responsible Government, Kathy Hayden, Treasurer.

43. The bills for the radio ads do not disclose the dates and times that each specific ad ran, nor do the radio stations or Impact Advertising have records that provide that information. For purposes of this decision it will be assumed that each of the four ad scripts ran an equal number of times.

44. The radio ads were aired on a Bozeman radio station owned by Reier Broadcasting Company. PRG's Campaign Finance Report for the period December 1 through 31, 2001, under Schedule C Debts and Loans Not Yet Paid, lists \$1,236.20 owed to Reier Broadcasting Company for "radio ads," with the debt incurred on October 31, 2001.

45. Aside from the debt referenced in Fact 44, Impact Advertising billed PRG for the radio ads. PRG paid Impact Advertising \$6,439.92 for radio ads, an amount that includes Impact Advertising's charges for preparing the ads and amounts Impact Advertising paid to the radio stations and billed back to PRG.

Yard Signs

46. PRG contracted with Signs Now, a Bozeman sign-making business, to produce yard signs. All signs produced for PRG contained the following message:

GET OUT AND VOTE Paid for by People for Responsible Government

PRG paid Signs Now \$933.88 for production of the signs.

47. PRG also paid Impact Advertising \$2,792.91 for its creative and incidental work on the newspaper political ad campaign, including graphic design, research, and copy writing.

48. As noted in the Summary of Facts herein, the Treasurer of PRG was identified on most ads placed by PRG as “Kathy Hayden.” (Facts 23-25, 27-35, and 39-42). On one ad the Treasurer was identified as “Cathi Hazen.” (Fact 26). As reflected in Fact 1, PRG’s C-2 Statement of Organization certified “Cathi Simonson” as the Committee Treasurer.

49. On most ads placed by PRG, the address of the committee was listed as: “P.O. Box 1408, Bozeman, Montana 59771-1408.” As reflected in Fact 1, PRG’s C-2 Statement of Organization identified its address (following clarification after its initial filing) as: “300 Wilson Avenue, Suite 3005, Bozeman, Montana 59715.”

50. “P.O. Box 1408,” the address listed in the newspaper ads purchased by PRG, is a post office box rented to Scott LaProwse, President of D & R Vending and one of the contributors to and the President of PRG. (Fact 1). None of PRG’s Campaign Finance Reports listed an in-kind contribution from LaProwse for use of the post office box. According to the Post Office, rental on P.O. Box 1408 is \$63 for six months and \$126 for a full year.

51. Kurtis Shull deposited funds into PRG's account and also wrote checks on PRG's checking account to pay for expenditures listed in PRG's Campaign Finance Reports.

STATEMENT OF FINDINGS

Claim 1

The complaint alleges that PRG violated Montana Code Annotated § 13-37-210, Montana's naming and labeling statute for political committees. That statute provides:

(1) Any political committee filing a certification and organizational statement pursuant to 13-37-201 shall:

(a) name and identify itself in its organizational statement using a name or phrase:

(i) that clearly identifies the economic or other special interest, if identifiable, of a majority of its contributors; and

ii) if a majority of its contributors share a common employer, that identifies the employer;

It is apparent from a review of each of the Campaign Finance Reports filed by PRG that there was not a reporting period in which a majority of contributors to the Committee shared a common employer. Thus, subsection (1)(a)(ii) of the statute does not apply. To establish a violation under subsection (1)(a)(i) of the statute, it would be necessary to prove that PRG's name does not clearly identify the economic or special interest, *if identifiable*, of a majority of the contributors to the committee. As reflected in Findings 7 through 9, there was not a reporting period in which a majority of contributors to the Committee shared an identifiable economic or special interest.

PRG's Campaign Finance Reports for the period September 14 through October 20, 2001, lists four separate contributions from the GVTA and nine contributions from individuals. Although the GVTA made multiple *contributions* during the reporting period, it must nevertheless be considered to be only one *contributor* for purposes of determining whether Montana Code Annotated § 13-37-210(1)(a)(i) was violated. While

the GVTA obviously shares a common economic or special interest with three of the listed contributors who are associated with restaurant/bar businesses (Shull, Bentley, and Ingus⁵), the four contributors do not constitute a majority of the eleven contributors during the reporting period.

PRG's Campaign Finance Report for the period October 21 through November 30, 2001, lists two separate contributions from the GVTA and eighteen contributions from individuals. Five of the individual contributors appear to share a common economic or special interest in the bar or restaurant business (see Fact 8 and footnote 3). After including contributor GVTA, six out of nineteen contributors share a common economic or special interest, and that is not a "majority" as set out in Montana Code Annotated § 13-37-210(1)(a)(i).

PRG's Campaign Finance Report for the period December 1 to December 31, 2001, lists only one individual contribution of \$200.

Based on the foregoing, there is insufficient evidence to conclude that PRG violated the provisions of Montana Code Annotated § 13-37-210.

Claim 2

The complaint alleges that PRG violated Montana Code Annotated § 13-37-216(1)(a)(iii) by contributing more than \$100 to the campaign of candidate Andrew Cetraro. The issues surrounding these allegations were addressed and a decision was rendered in the Summary of Facts and Statement of Findings issued on June 6, 2002, in the case entitled In the Matter of the Complaint Against Andrew L. Cetraro. Since the entire \$500 contribution was returned by the Cetraro campaign to PRG, the conclusion is that PRG did not contribute anything of value to Andrew Cetraro.

Thus, there is no violation of the provisions of Montana Code Annotated § 13-37-216(1)(a)(iii)

⁵ The purported contribution from Kim Innes (listed as a contribution from "Kim Ingus") will be discussed later in this decision.

Claim 3

In Claim 3 the complainant alleges that the GVTA violated Montana Code Annotated § 13-37-217, which prohibits contributions in the name of an undisclosed principal. According to the complaint, the GVTA has no income, so the \$17,500 that it contributed to PRG must have come from other persons, in violation of the statute.

The investigation disclosed that local businesses pay annual dues to belong to the GVTA. In addition, the MTA annual conference was held in Bozeman in 2000 and 2001, and the GVTA received a portion of money raised by the MTA through banquets, golf tournaments, and other functions associated with its annual conventions. A close examination of the GVTA's bank records reveals that none of the money that was collected through dues or through its share of the money collected through the annual MTA conventions was earmarked for subsequent contributions to PRG.

Absent any such evidence, there is no proof that the GVTA violated Montana Code Annotated § 13-37-217.

Claim 4

The complaint alleges that PRG, a for-profit corporation, violated Montana Code Annotated § 13-35-227, which prohibits direct corporate contributions and expenditures in connection with a candidate. Prior to determining whether there is any basis to this claim, it is necessary to discuss the version of Montana Code Annotated § 13-35-227 that is currently in effect and enforceable.

Initiative 125 (hereafter "I-125") was passed by the Montana electorate in 1996. I-125 amended Montana Code Annotated § 13-35-227 which, prior to the amendment, prohibited direct corporate contributions in connection with: 1) candidates, 2) political committees that support or oppose candidates, and 3) political parties. The amendments enacted by I-125 added ballot issues to the list of restricted corporate contributions and expenditures. Corporations retained the right to make political contributions and expenditures through separate, segregated funds set up and

administered by the corporations. Moreover, I-125 provided that the restrictions did not apply to a nonprofit corporation formed for the purpose, among others, of promoting political ideas, and that:

- (a) does not engage in business activities;
- (b) has no shareholders or other affiliated persons who have a private claim on the corporation's assets or earnings;
- (c) does not accept foreign or domestic for-profit corporations as members; and
- (d) does not accept in the aggregate more than 5% annually of its total revenue from foreign or domestic for-profit corporations.

I-125 was conceived based primarily on the United States Supreme Court's decision in Austin v. Michigan Chamber of Commerce, 494 U.S. 652 (1990). In Austin the Court recognized a new type of corruption, distinguishable from the so-called "financial *quid pro quo*" corruption that had been identified by the Court as a justification for restrictions on large monetary contributions to candidates from individual contributors to secure political favors. The Court observed that this new type of corruption justified restrictions on corporate contributions to candidates, because the regulation sought to deal with "the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas." Austin, 494 U.S. at 659-60. The Court had previously referred to this different type of corruption in FEC v. Massachusetts Citizens for Life, Inc., 479 U.S. 238 (1986) (MCFL).

The Montana Chamber of Commerce and several other Montana incorporated entities filed a complaint in Federal District Court in Helena in February 1997, seeking a

declaration that I-125 was unconstitutional. A two-week bench trial was held in October 1998. Judge Charles Lovell ruled from the bench on October 22, 1998, concluding that I-125 violates the First Amendment and permanently enjoined its enforcement. The Ninth Circuit Court of Appeals affirmed, and the United States Supreme Court denied certiorari. Montana Chamber of Commerce, et al. v. Ed Argenbright, et al., 28 F. Supp.2d 593 (D. Mont. 1998); *aff'd* 226 F.3d 1049 (9th Cir. 2000); *cert. denied* 122 S. Ct. 46 (2001).

As noted, I-125 was declared unconstitutional in October, 1998. An unconstitutional statute enacted to take the place of a prior statute does not affect the prior statute. See, e.g., Application of O'Sullivan, 117 Mont. 295, 304, 158 P.2d 306, 310 (1945). Thus, when I-125 was declared unconstitutional, the valid, enforceable version of Montana Code Annotated § 13-35-227 that was in effect was the version that existed prior to its amendment by I-125 and which provided:

Prohibited contributions from corporations. (1) A corporation may not make a contribution or an expenditure in connection with a candidate or a political committee which supports or opposes a candidate or a political party.

(2) A person, candidate, or political committee may not accept or receive a corporate contribution described in subsection (1).

(3) This section does not prohibit the establishment or administration of a separate, segregated fund to be used for making political contributions or expenditures if the fund consists only of voluntary contributions solicited from an individual who is a shareholder, employee, or member of the corporation.

(4) A person who violates this section is subject to the civil penalty provisions of 13-37-128.

This statute prohibits corporations from making contributions or expenditures “in connection with a candidate or a political committee which supports or opposes a

candidate” other than through a separate, segregated fund that qualifies under subsection (3) of the statute.

As set forth in the Summary of Facts, PRG, which is a for-profit corporation, made thousands of dollars in expenditures “in connection with” candidates and a political committee that supports or opposes candidates. PRG’s very purpose, according to its C-2 Statement of Organization, was “to support or oppose candidates for elective office, ballot issues, and political action as determined appropriate by the Directors of the Corporation.”

Where corporate expenditures are prohibited by law, courts have held in general that corporate expenditures not coordinated with a candidate are prohibited if the political message expressly advocates the election or defeat of a clearly identified candidate. See MCFL, 479 U.S. at 249; and Faucher v. Federal Election Commission, 928 F.2d 468, 470 (1st Cir.), *cert. denied*, 112 S. Ct. 79 (1991). In MCFL the United States Supreme Court considered whether § 441b of the Federal Election Campaign Act of 1971, which prohibits corporations from using general corporate treasury funds to make expenditures in connection with federal candidates, could constitutionally be applied to Massachusetts Citizens for Life, Inc., a corporation organized for political purposes. While the Supreme Court ultimately held that the restrictions of the statute could not be applied to Massachusetts Citizens for Life, Inc., due to the particular characteristics of that specific non-profit corporation⁶, it also determined that an “independent” expenditure (one not coordinated with a candidate) must constitute “express advocacy” to be subject to the prohibition of § 441b. MCFL, 479 U.S. at 249.

The “express advocacy” standard was devised by the United States Supreme Court in Buckley v. Valeo, 424 U.S. 1 (1976) to avoid problems of overbreadth in

⁶ Since PRG’s Articles of Incorporation disclose that PRG is organized as a for-profit corporation that is authorized to engage in commercial transactions and issue shares of capital stock, PRG does not possess the same characteristics as Massachusetts Citizens for Life, Inc. that led the Supreme Court to exempt it from the requirement that political expenditures be made through a separate, segregated fund.

attempts to regulate political speech. The Court recognized that general discussions of issues and candidates are distinguishable from more pointed exhortations to vote for or against particular persons. In Buckley, the Court, in a footnote, gave examples of “express advocacy” including phrases such as “vote for,” “elect,” “support,” “cast your ballot for,” etc. Buckley, 424 U.S. at 44, n. 52. Subsequent court decisions have clarified those comments by the Supreme Court.

The Court in MCFL determined that a communication need not include one or more of the particular phrases listed in Buckley to constitute express advocacy, finding that a message that is “marginally less direct” than a “vote for” message, or that “in effect” provides an explicit directive, can be express advocacy. The Supreme Court determined that the “essential nature” of such ads “goes beyond issue discussion to express electoral advocacy.” MCFL 479 U.S. at 249. In FEC v. Furgatch, the Ninth Circuit Court of Appeals considered whether a political advertisement expressly advocated the defeat of President Jimmy Carter in the days before the 1980 presidential election. The Court noted that a “proper understanding of the speaker’s message can best be obtained by considering speech as a whole.” Furgatch, 807 F.2d at 863. Rejecting the use of a “magic words” approach as a test of express advocacy, the Court stated that applying such a test could result in permitting campaign spenders to “remain just beyond the reach of the Act by avoiding certain key words while conveying a message that is unmistakably directed to the election or defeat of a named candidate.” Furgatch, 807 F.2d at 863.

The Court then established the following test:

We conclude that speech need not include any of the words listed in Buckley to be express advocacy under the Act, but it must, when read as a whole, and with limited reference to external events, be susceptible to no other reasonable interpretation but as an exhortation to vote for or against a specific candidate.

Furgatch, 807 F.2d at 864.

The Court divided this standard into three components:

- 1) Speech is “express” only if “its message is unmistakable and unambiguous, suggestive of only one plausible meaning.”
- 2) Speech amounts to “advocacy” only “if it presents a clear plea for action,” as opposed to being merely informative.
- 3) It must be clear what action is advocated. If “reasonable minds could differ” regarding whether the speech encourages a vote for or against a candidate, it is not “express advocacy.”

Furgatch, 807 F.2d at 864.

At least one other court that has considered the question has accepted the analysis of the Ninth Circuit, applying a similar “context-based” standard for determining whether speech amounts to express advocacy. State ex rel. Crumpton v. Keisling, 982 P.2d 3 (Or. App. 1999). In 1995 the Federal Election Commission adopted a regulation defining “expressly advocating” based in large part on standards established by the United States Supreme Court in Buckley, and the Ninth Circuit in Furgatch:

Expressly advocating means any communication that—

(a) Uses phrases such as “vote for the President,” “re-elect your Congressman,” “support the Democratic nominee,” “cast your ballot for the Republican challenger for U.S. Senate in Georgia,” “Smith for Congress,” “Bill McKay in '94,” “vote Pro-Life” or “vote Pro-Choice” accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, “vote against Old Hickory,” “defeat” accompanied by a picture of one or more candidate(s), “reject the incumbent,” or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say “Nixon's the One,” “Carter '76,” “Reagan/Bush” or “Mondale!”; or

(b) When taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because—

(1) The electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and

(2) Reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action.

The political expenditures by PRG will be analyzed with these standards in mind.

Newspaper Advertisements

The following newspaper ads, which do not identify any specific candidates, do not constitute “express advocacy”:

Letting Others Make Decisions 1 (Fact 22)

Abraham Lincoln quote 1 (Fact 23)

Abraham Lincoln quote 2 (Fact 24)

People for Responsible Government (Fact 26)

Phrases Politicians Use (Fact 32)

Can't Complain (Fact 33)

VOTE (Fact 34)

Letting Others Make Decisions 2 (Fact 35)

Free Enterprise System (Fact 36)

The Kirchoff quote ad (Fact 25) also does not constitute “express advocacy.” While it clearly identifies Steve Kirchoff, who at the time was a sitting commissioner, it does not refer to a specific candidate. As noted in Fact 19, Kirchoff was not a candidate for any office during 2001.

The following ads constitute express advocacy:

Marcia Youngman 1 (Fact 27)

Marcia Youngman 2 (Fact 28)

Marcia Youngman 3 (Fact 29)

Marcia Youngman 4 (Fact 30)

Joe Frost (Fact 31)

Each of these ads goes well beyond issue discussion. Each ad identifies a specific candidate, Marcia Youngman or Joe Frost. Each ad contains a series of statements and counter-statements addressing, in a highly critical fashion, each candidate's actions and positions on various issues. Each ad then concludes by urging voters to make sure the candidate represents their best interest, and to "vote smart" on election day. Any reasonable person would interpret these ads as express advocacy of the defeat of candidates Youngman and Frost. The message of each ad is "unmistakable, unambiguous, and suggestive of only one meaning."

Radio Advertisements

Applying the aforementioned standards, it is apparent that the two radio ads described in Facts 39 and 40, and identified by Impact Advertising as "No Humor 1" and "No Humor 2," do not contain express advocacy. While both ads discuss issues that are relevant to an upcoming election, neither ad identifies a specific candidate. The two ads described in Facts 41 and 42, however, do contain express advocacy. These two ads, identified "Marcia Youngman" and "Joe Frost," each refer to a clearly identified candidate. Both ads are very similar in content and approach to those newspaper ads discussed above pertaining to the same candidates. Any reasonable person would interpret these ads as express advocacy of the defeat of Youngman and Frost in the November 6th election.

Yard Signs

None of the yard signs, that simply proclaimed: "Get out and vote," contain express advocacy.

Total Expenditures for Express Advocacy

The amount that PRG paid for the newspaper ads placed in the Bozeman Chronicle that contained express advocacy totaled \$2,289.75 (Fact 37). The amount that PRG paid for all four ads to run on the radio was \$7,676.12 (Facts 44 and 45). Since only two of the four radio ad scripts contain express advocacy, and there is no

way to determine which ads aired on specific dates, it is reasonable to assume that at least half the total amount expended, or \$3,838.06, is attributable to the ads containing express advocacy. In addition, PRG paid Impact Advertising \$2,792.91 for its creative and incidental work on PRG's newspaper political ad campaign (Fact 47). Since five of the twenty-five newspaper ads (one-fifth) contain express advocacy, it is reasonable to conclude that \$558.58 of that amount is attributable to ads containing express advocacy.

In summary, there is substantial evidence to conclude that PRG violated Montana Code Annotated § 13-35-227 by making illegal corporate expenditures in connection with a candidate or a political committee that supports or opposes a candidate.

Other Violations

Contribution in Name of Undisclosed Principal

As described in Fact 11, PRG's Campaign Finance Report for the period September 14 through October 20, 2001, states that "Kim Ingus, Office Manager, Cat's Paw," contributed \$1,000 to the Committee. The bookkeeper at the Cat's Paw, whose name is actually Kim Innes, denies making a contribution to PRG. Bank records show the \$1,000 check that accompanied the deposit slip for the contribution was drawn on the account of Tom Hougen and Allison Hougen. PRG's Campaign Finance Reports do not reflect a contribution from Tom or Allison Hougen.

Montana Code Annotated § 13-37-217 provides:

Contributions in name of undisclosed principal. No person may make a contribution of his own money or of another person's money to any other person in connection with any election in any other name than that of the person who in truth supplies such money. No person may knowingly receive such a contribution or enter or cause the same to be entered in his accounts or records in another name than that of the person by whom it was actually furnished. (Emphasis added).

PRG violated this statute by reporting, as a \$1,000 contribution from Kim Ingus, what was actually a \$1,000 contribution from Allison Hougen.⁷

Attribution on Election Materials

Montana Code Annotated § 13-35-225 requires all financed communications advocating the success or defeat of a candidate to “clearly and conspicuously state the name and address of the person who made or financed the expenditure for the communication, including in the case of a political committee, the name and address of the treasurer.” The Marcia Youngman and Joe Frost newspaper and radio ads did not comply with this statute, because: 1) they did not provide the true name of the treasurer (Cathi Simonson), and 2) they did not include the correct address of PRG as listed in its C-2 Statement of Organization. See Facts 1, 27, 28, 29, 30, 31, 41, and 42. The total amount paid by PRG to produce and run those ads is set forth above, under the discussion regarding Claim 4.

Post Office Box Rental

As set forth in Fact 50, the post office box address listed in the PRG ads is a post office box rented by Scott LaProwse. None of PRG’s Campaign Finance Reports listed an in-kind contribution from LaProwse for the use of the post office box. PRG violated Montana Code Annotated § 13-37-229 by failing to disclose this in-kind contribution.

Deposits and Expenditures by Other Than Campaign Treasurer

As set forth in Fact 51, Kurt Shull deposited funds into PRG’s bank account and wrote checks on PRG’s checking account. Kurt Shull is identified in PRG’s C-2 Statement of Organization as the Secretary, not the Treasurer, of PRG. This violates Administrative Rules of Montana 44.10.503, which requires that only the appointed treasurer or deputy treasurer may deposit or expend committee funds.

⁷ According to ARM 44.10.511(2), a contribution received by check drawn on a joint checking account shall, unless otherwise specified in writing at the time of the contribution, be deemed and reported as a contribution from the person who signed the check.

The GVTA's Failure to Report

The GVTA contributed a total of \$17,500 to PRG between September 14 and November 30, 2001. Despite two letters from the Commissioner advising the GVTA that it was required to file a report as an incidental political committee, the GVTA never filed a report. (Fact 10).

Montana law defines a "political committee" as:

[A] combination of two or more individuals or a person other than an individual who makes a contribution or expenditure:

(a) to support or opposes a candidate or a committee organized to support or oppose a candidate or a petition for nomination; or

(b) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

(c) as an earmarked contribution.

Montana Code Annotated § 13-1-101(18).

The definition of "person" includes an "association . . . or other organization or group of individuals" Montana Code Annotated § 13-1-101(17). The GVTA is clearly a "political committee" under the above definitions, since it is a "person" who made contributions to PRG, a "committee organized to support or oppose a candidate." Montana Code Annotated § 13-1-101(18)(a). (See Fact 1).

The GVTA is classified as an "incidental committee" under Administrative Rules of Montana 44.10.327(2)(c):

An incidental committee is a political committee that is not specifically organized or maintained for the primary purpose of influencing elections but that may incidentally become a political committee by making a contribution or expenditure to support or oppose a candidate and/or issue.

When the GVTA, which is not specifically organized for the purpose of influencing elections, made contributions to PRG, a political committee that was, according to its C-2 Statement of Organization, specifically organized "to support or oppose candidates for

elective office, . . .” (see Fact 1), the GVTA thereby became an incidental political committee. Montana Code Annotated § 13-37-226(6) authorizes the Commissioner to establish, by administrative rule, reporting requirements for incidental political committees. Administrative Rules of Montana 44.10.411 sets the filing requirements and schedule for incidental political committees. The GVTA has not complied with any of the requirements of that rule, and has thereby violated the rule and Montana Code Annotated §§ 13-37-225 and 13-37-226.

CONCLUSION

Based on the preceding Summary of Facts and Statement of Findings, there is substantial evidence to conclude that People for Responsible Government, the individual treasurer and committee members of People for Responsible Government, and the Gallatin Valley Tavern Association, a.k.a. the Gallatin Valley Licensed Beverage Association, violated Montana’s campaign practices and campaign finance reporting and disclosure laws, and that a civil penalty action under Montana Code Annotated § 13-37-128, is warranted.

DATED this _____ day of October, 2002.

Linda L. Vaughey
Commissioner of Political Practices